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May 17, 1995

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Dear Mr. Caton

On behalf of Golden Orange Broadcasting Co., Inc., there are herewith submitted an original and five (5) copies of its Comments in MM Docket No. 91-221.

Sincerely

Lawrence N. Cohn

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE

Federal Communications Commission

In the Matter of	)	
	)	
Review of the Commission's	)	MM Docket No. 91-221
Regulations Governing Television	)	
Broadcasting	)	

To: The Commission

COMMENTS

Golden Orange Broadcasting Co., Inc. ("Golden Orange"), licensee of Television Station KDOC, Anaheim, California, by its counsel, hereby submits its Comments in response to the Further Notice of Proposed Rulemaking (FCC 94-322) ("FNPRM") issued by the Commission on January 17, 1995, in the above-captioned proceeding. Golden Orange's comments regarding the proposals to change the local ownership aspects of the Commission's multiple ownership rules are set forth below.

I. Summary

Golden Orange's comments are primarily directed toward the issue raised in the FNPRM of whether, and if so under what circumstances, a single entity should be allowed to own, operate, or control (hereinafter referred to for purposes of simplicity as "own") more than one television broadcast station in a single market (FNPRM, Paras. 116-123). On this issue, Golden Orange believes that the Commission should change its rules to allow an entity to own a UHF/UHF or UHF/VHF combination of TV broadcast stations in the same market <u>without any restriction</u>.

However, in the event the Commission declines to change its rules in this manner, Golden Orange proposes that the Commission allow such UHF/UHF and UHF/VHF joint ownership in circumstances where there are "substantial independent competing media" in the relevant market (as defined below). Finally, if the Commission determines that it will not allow joint ownership of UHF/UHF and UHF/VHF television stations in a market, Golden Orange supports the Commission's proposal (advanced in the FNPRM) to utilize the Grade A contours of television broadcast stations to determine whether television stations are sufficiently close to be of concern for purposes of local concentration of control purposes.

On a separate subject, Golden Orange supports the Commission's proposal to treat television LMA's similar to the way it treats radio LMA's; however, it believes that television LMA's entered prior to the effective date of the adoption of the television LMA <u>rules</u>, not merely those entered before the <u>FNPRM</u> was adopted, should be given "grandfathered" status.

Golden Orange also believes that the Commission should eliminate its current one-to-a-market rule which generally prohibits radio/television station combinations. Golden Orange believes that elimination of this rule, and reliance on the local radio and local television ownership rules, would greatly promote news carriage by radio stations and, in particular, the creation of all-news stations in middle or smaller markets where it is otherwise not economically feasible. Accordingly, the elimination of the radio/television station prohibition would serve the public interest.

II. The Commission Should Eliminate the Television "One-to-a-Market" Rule Insofar As It Pertains to UHF/UHF and UHF/VHF Combinations.

Golden Orange's views flow from its fundamental belief that in many situations, if the Commission were to allow entities to own more than one television broadcast station in a market, it would ultimately have favorable public interest ramifications because of the savings which would be realized by the joint operation of the stations. This principle is not in dispute; indeed, the Commission recognized forcefulness of this point in the FNPRM when it wrote the following (at Para. 107):

> joint ownership of stations in the same market permits cost-sharing in administrative and overhead expenses, sharing of personnel, joint advertising

> sales, and the pooling of resources for local program production (such as news and public affairs programming). We believe the cost savings from these economies could then be used to provide better programming to the public.

Thus, comments such as these, which urge the relaxation of the Commission's multiple ownership regulations, must not be treated as merely self-serving statements, but should be favorably considered by the Commission because relaxation of the multiple ownership restrictions <u>would affirmatively serve the public interest</u> by promoting efficiency and making funds available for additional news, public affairs, and other public service programming.

Golden Orange believes that the weight of experience in analogous situations has shown the value of such joint television operations. Specifically, combinations of two television stations under Local Marketing Agreements (or "LMA's"), which are currently not the subject of Commission regulation, have allowed several stations which were either off the air or operating under extremely restricted financial circumstances, to become economically viable and to thereby enhance the diversity of programming available in their markets. Indeed, local news and local issue-oriented programming which may have been totally absent or available only in limited amounts, are more likely to increase under dual ownership. Similarly, the Commission's experience with the waiver of the radio/television cross-ownership prohibition in the context of "failed stations" and stations in the top 25 markets with 30 or more independent broadcast voices[1/] shows that such combinations can, and often do, result in an increase in programming diversity. Therefore, Golden Orange believes that the weight of experience strongly suggests that the complete elimination of the television overlap rule, insofar as it applies to UHF-UHF and UHF-VHF combinations, would promote the public interest. The public interest would best be served by reliance on the anti-trust laws to stop combinations which are likely to have significant anti-competitive ramifications.

However, Golden Orange appreciates the Commission's concern that entities not be allowed to create a television station combination in a market where that combination would significantly detract from economic competition and diversity of programming viewpoint. Golden Orange believes that if the Commission is determined to retain any restrictions on such combinations, it should not adopt a single rule which is designed to be applicable in all situations, and which would treat all markets as though they were the same or similar. The flaw in such an approach is that it

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1/ See Section 73.3555, Note 7.

fails to recognize the fundamentally important point that while in some (smaller) markets the combination of two TV broadcast stations might conceivable have an adverse impact on economic competition and viewpoint diversity, in other (larger) markets the effects of the same television broadcast station combination would almost certainly be minimal (at most). Any restrictive rules adopted by the Commission in this proceeding must recognize that one size does not fit all, and should take into account that at least in some situations, it is a virtual certainty that a combination of television broadcast stations in a market would provide major benefits to the public which would outweigh any negative consequences which might result from any slight reduction of economic competition and viewpoint diversity.

Accordingly, Golden Orange believes that if the Commission is unwilling to allow all UHF/UHF and UHF/VHF combinations without restriction, it should adopt television cross-ownership rules which vary from market to market, and which allow a single entity to own any UHF/VHF or UHF/UHF combination if the applicant is able to demonstrate to the Commission's satisfaction that, apart from the stations proposed for joint ownership,[2/] there are a substantial

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[2/] Each applicant would be required to make the showing in its (continued...)

number of other "independent competing media" in the market. For these purposes, Golden Orange proposes that the following be considered as "competing media."[3]

1) Other TV broadcast stations in the DMA (excluding the ones which are the subject of the proposed combination). For this purpose, the Commission would consider all full-power television broadcast stations located in the A.C. Neilson Designated Market Area ("DMA") of the stations (or either of them if they are in different DMA's) which are the subject of the proposed combination.

2) Other TV broadcast stations which are "significantly viewed" in the local market. For this purpose, the Commission would use as a standard for "significantly viewed" status the standard defined in Section 76.5(i) of the Commission's rules. To qualify as a "competing media" under this test, a TV broadcast station would have to be significantly viewed in the county (or counties, if applicable) where the city(ies) of license of the two

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[2] (...continued) application, and applications would be accepted and acted upon on a first-come, first-served basis. See FNPRM, Para. 123. This would be fair to all stations in every market, because each licensee would learn of the possibility for television station combinations at the same time.

[3] The concept of "independent" media is explained on page 10, below.

stations which are the subject of the proposed combination are situated.[4/]

3) Low power television station ("LPTV") which are either (i) licensed to the same community as either of the television broadcast stations which are the subject of the proposed combination, or (ii) located in the county which includes the community of license of either of the stations which are the subject of the proposed combination, but (in such case) only if the LPTV facility meets the Commission's standards for "significantly viewed" status as set forth in Section 76.5(i) of the Rules. If the television stations proposed for merger were licensed to communities in different counties, an LPTV station not licensed to

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[4/] Under Section 76.5(i) of the Rules, a network affiliated station is considered "significantly viewed" if it achieves a 25% net weekly circulation and 3% share of total viewing hours. For non-network affiliates, the standard is a 5% net weekly circulation and 2% share of viewing hours. Section 76.54 of the Rules requires that the station either (i) be shown as significantly viewed in the Commission's list of such stations in Appendix A to Memorandum Opinion and Order on Reconsideration of Cable Television Report and Order, FCC 72-530, 36 FCC 2d 326 (1972) based on audience surveys taken in 1970-1971; or (ii) be based on multiple countywide audience ratings achieved within the first three years of the station's operation, or on properly conducted community-wide audience ratings taken at any time. For current purposes, Golden Orange suggests that stations be deemed significantly viewed based on either the Commission's 1970-1971 survey or on multiple countywide surveys taken at any time.

one of those communities, in order to be considered as a "competing media," would be required to be significantly viewed in both counties.

4) Cable television, where the county (or counties) which includes the community of license of the television broadcast stations which are the subject of the proposed combination, has a home cable penetration rate which exceeds 25%.

5) Other video services (e.g., DBS, wireless cable, MMDS, etc.), where such video services provide effective competition to the proposed television broadcast station combination. For these purposes, such other providers would be deemed to provide "effective competition" if the multichannel video programming distributors (12 or more channels) provided service to at least 5% of potential subscribers (total) in the DMA.

6) Local daily newspapers of general circulation published in the community of license of either of the stations which are the subject of the proposed merger. For these purposes, the Commission should use consider as a daily newspaper of general circulation newspapers which meet the definition contained in Note 6 to Section 73.3555 of the Rules.

Under this "market-by-market" approach, an applicant which proposed to create a UHF/UHF or UHF/VHF combination would be required to demonstrate the existence of a specified number (to be determined by the Commission) of competing media which are completely independent of the entity (or entities) which would own the "jointly owned" television stations (i.e., the other media entities could not have any officers, directors, voting stockholders, or general partners in common with the entity(ies) owning the "jointly owned" television stations.) Subsequent changes in ownership structure which would eliminate this independence should not be allowed. Golden Orange believes that where a proposed combination of two television broadcast stations (one of which is a UHF station) would leave a substantial number of other independent competing media, any diminishment in economic competition and viewpoint diversity which might result would be outweighed by the public interest gains which would result from efficiencies brought about by the joint operation of the stations.

III. If the Commission Decides Not To Allow the Ownership of Two Television Stations in the Same Market, It Should Use the Grade A Contour of Television Stations To Determine the Existence of Prohibited Overlap.

In the FNPRM (at Para. 116), the Commission has tentatively proposed to change its rules to utilize the Grade A contours of television stations (rather than the Grade B contours[5/]) for purposes of determining whether prohibited television broadcast station overlap exists. As the Commission noted (at Para. 117), the vast majority of the parties filing comments earlier in this proceeding have made the point that the area within a station's Grade A contour provides a "substantially more realistic and accurate measure of a station's core market" than does its Grade B contour, and hence the use of the Grade A contour is more sensible to use for overlap purposes. Although Golden Orange strongly supports the view that the Commission should allow the ownership of UHF/UHF and UHF/VHF combinations in the same market <u>regardless</u> of contour overlap, <u>at the very least</u> the Commission should change Section 73.3555(b) of the Rules to provide for the use of the Grade A contour of television broadcast stations in determining the existence of prohibited overlap between television stations (UHF/UHF and UHF/VHF combinations) which are proposed for joint ownership.

5/ <u>See</u> Section 73.3555(b).

IV. The Commission Should "Grandfather" Television LMA's Which Are in Existence as of the Date the New Television LMA Rules Become Effective.

In the FNPRM (at Para. 138), the FCC tentatively proposes to treat LMA's for television stations in the same way as it treats LMA's for radio stations (i.e., the agreements must be filed with the FCC and must be placed in the station public file; the LMA's stations will be treated as an "owned" station for purposes of the local and national multiple ownership rules, etc.). Golden Orange agrees with the Commission's tentative proposals on this basic point. However, it disagrees with the Commission's proposal to "grandfather" only those television LMA's entered into prior to "the adoption of this Notice, subject to renewability and transferability guidelines similar to those governing radio LMA's" (footnote omitted). Id.[6]

When the Commission considered the "grandfathering" issue in the context of radio station LMA's, it determined that LMA's entered into prior to the effective date of the applicable rules would be grandfathered (subject to certain conditions regarding

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[6] Although the word "Notice" appears as a defined term in the FNPRM, and refers to the Commission's 1992 Notice of Proposed Rule Making, 7 FCC Rcd 4111, Golden Orange assumes that this is reference is in error, and that the reference to "this Notice" is in fact intended to refer to the FNPRM, which was adopted on December 15, 1994.

renewability, assignability, etc.) Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, In re Revision of Radio Rules and Policies, MM Docket No. 91-140, 7 FCC Rcd 6387, at 6402 (1992), and Second Memorandum Opinion and Order, MM Docket No. 91-140, 9 FCC Rcd 7183, at 7192 (1994). Golden Orange believes that the approach taken by the Commission in the context of radio station LMA's makes good sense, and that there is no good reason to distinguish between TV and radio LMA's by refusing to grandfather television station LMA's which are entered after the adoption of the FNPRM (December 15, 1994) but before the effective date of the applicable television LMA rules.

Moreover, Golden Orange believes that the approach taken by the Commission in the radio LMA situation was fair, and that the proposed approach in the FNPRM to the television LMA situation is unfair. Golden Orange believes that certain parties with informal contacts with the Commission's staff had advance notice that the FNPRM would be adopted on December 15, 1994, and that LMA's were rushed and entered immediately prior thereto, and in reliance on such information, in order to achieve "grandfathered" status. While Golden Orange does not suggest that either such parties or any members of the Commission's staff acted improperly or unethically in this regard, Golden Orange sees no reason why those members of the public who took advantage of "insider contacts" should be allowed to benefit while those members of the public without such contacts confronted a fait accompli upon reading the FNPRM, because their right to enter a "grandfathered" television LMA was cut off without notice.

V. The Commission Should Eliminate the Current Prohibitions on Radio/Television Cross-Ownership.

Section 73.3555(a) of the Commission's rules limits the number and types of radio stations which may be owned by an single entity in a given market, and Section 73.3555(b) governs the ownership of television stations in a market. In addition, Section 73.3555(c) of the Rules currently prohibits an entity from owning both radio and television station(s) in any market (defined on the basis of overlapping coverage contours), although Note 7 states that the Commission will "waive" such rules in the case of a "failed station" or in the top 25 markets and where, after the consolidation, there will remain at least 30 separately owned broadcast licenses. Golden Orange is well aware of the competitive factors which criss-cross within the radio and television sides of the broadcasting industry. Based upon its experience, Golden Orange believes that television and radio services do not compete substantially the areas of local advertising, program delivery, and diversity of opinion in specific markets, and it believes that if the Commission were to allow the creation of radio/television combinations in the same market, it would not have a material adverse affect on marketplace competition.

Moreover, Golden Orange firmly believes that the opportunities for enhanced public service by the creation of radio/television combinations goes beyond the mere reduction of administrative expenses (*e.g.*, plant, utilities, administrative staff, etc.) which the Commission has recognized would be produced in the context of TV/TV combinations (see FNPRM, and discussion at Section II, above), and the potential of such funds for use by licensees in news and public service programming. Attached hereto is a memorandum describing the specific ways the joint ownership of a radio station would allow Golden Orange to save on administrative costs and provide better service to the public.

If television station owners were allowed to own radio stations in the same market, it would allow them to use the tremendous news-gathering and reporting talent and equipment already on hand and available to the television station owners to enhance the news capabilities and performance of their jointly-owned radio stations. Particularly in middle-size and modest-size markets, most radio stations are able to devote only minimal resources to news reporting and other local issue-oriented discussions. Similarly, the cost of news gathering is so expensive that, for the most part, the all-news stations which are able to stand by themselves on a commercial basis are in the larger markets, where there is a sufficiently large segment of the available audience to support this program format. In middle and smaller markets, the audience for such programming is simply not of sufficient size to allow such a high-cost operation, and hence it is extremely difficult, if not completely impossible, for licensees to operate an all-news station on an independent, economically-viable, basis. However, if the owners of television stations were allowed to own local radio stations, they would be in a position to combine the news facilities of the stations, vastly increasing the amount and quality of news programming available to radio station audiences. In sum, the negligible additional cost of newsgathering for a radio station which was co-owned with a television station would greatly enhance the economic viability of all-news radio stations (particularly in middle and smaller markets) would such stations, and would directly promote the public interest.

Accordingly, Golden Orange believes that the Commission should eliminate the current radio/television cross ownership prohibition in Section 73.3555(c), and should rely solely on the Commission's local radio and the local television rules (as amended in this proceeding) to govern the extent to which a single entity is allowed to own more than a single broadcast facility in a given market.

Respectfully submitted

GOLDEN ORANGE BROADCASTING CO., INC.

By: Robert B. Jacobi (hic)

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Its Counsel

Dated: May 17, 1995

In Consideration:

A COMBINED RADIO AND TV OPERATION IN ORANGE COUNTY:

Addition of a radio station operation to the KDOC, Irvine plant, would offer some interesting possibilities:

It is possible that KDOC could acquire a radio station within or near Orange County, and institute an outstanding program offering for the benefit of the residents. KDOC management already has a considerable experience dealing with the special needs of the county. Since we anticipate more program experimentation once we complete our studio move to Irvine, the added prospect of combining community service programming on a radio and a TV station raises the likelihood of success.

Many radio stations survive month by month with a simple "formula" in mind, in hopes that the listeners will eventually discover this dull routine. "Formula" is cheaper than "talent", and when budgets are tight, the substitution appears appropriate. Unfortunately, formulas peak quickly and then fall. Only talent lasts. We understand this in TV, and feel that we could provide a solid basis for a unique new radio service to the community. We would anticipate higher programming budgets for radio than other local owners might provide. This can be done because the costs of operation are less for us since so much of the daily operating expenses would be covered by the TV station. Therefore, KDOC could make a profit on the operation of the radio station at a lower threshold than practically any other owner. There are several departmental services which can be utilized by both Radio and TV, meaning a separate department may not be needed for radio.

Some of the ways that costs and services can be shared:

Staff Economy

1. A single management team could supervise the operation of both RADIO and TV stations.

2. A single engineering team could supervise and maintain the plants of both RADIO and TV stations.

3. A combined staff of artists and operational personnel would enhance the performance of the alternate media. Conceivably news, commentary, and editorial writing could be utilized on both RADIO and TV.

4. A single promotion department could service both RADIO and TV, and frequently cross-promote each on the other.

5. A single accounting department could service both RADIO and TV.

6. A single traffic department could service both RADIO and TV.

7. Announcers from RADIO could produce the voice-overs for TV.

8. Building and general maintenance expenses will be common to both RADIO and TV, not representing a significant increase in cost to the owners.

Facilities Economy:

1. Radio could very simply be added to the Irvine building, since the spaces available are perfect for technical and office additions.

2. Any radio production facility built for radio can be useful to TV productions as well.

3. Radio can share the announce booth and sound stage for special program and spot production.

4. Remote programming, delayed playback, and network programs on radio can be controlled at the TV master control room by the TV duty operator.

5. Emergency communications equipment, EAS (formerly EBS) would service both stations.

6. Microwave STL signal relay to the respective transmitter sites could be done from the existing Irvine tower.

7. Depending on the station specifications, the radio transmitter could occupy the TV transmitter building and tower.

Programming enhancement:

1. Programming experimentation with radio which yields a success can be used to direct the programming decisions in TV, and vice versa.

2. The needs of Orange County viewers / listeners can be more fully satisfied with a combination of programs in both radio and TV. This avoids duplication, provides an opportunity for more depth, and compliments the offerings of each.

3. Some public affairs programs are in a form (or can be designed to be) usable for both radio and TV. For example, the ***Southland Today*** program would be perfect for radio, by simply playing back the audio track. This makes the information in this program available to a whole new audience.

Promotional enhancement:

1. The close linking of KDOC with a radio station will make for several new promotional opportunities. "Good will" can be transferred from station to station.

2. Radio can assist in the promotion of KDOC during its highly competitive HDTV conversion.

3. A combined radio and TV news staff could make news more credible, and eventually successful for both modes.

4. Cross promotions for special programs could make improved ratings for both. The difficulty with getting people to know that we-are-here would be easier.

5. "Stars" developed on either station can be used to attract new viewers / listeners to the other.

Sales enhancement:

1. KDOC is in a position to operate a radio station less expensively than almost any other owner, making a marginal radio operation profitable.

2. There would be new opportunities for combination sales packages. Some advertisers would respond more favorably to a mixed media package rather than TV or radio alone.

3. Introduces national advertisers and agencies to TV by way of their radio advertising.

4. Makes available additional inventory for sales. If radio is not sold out, it can be used as a bonus pool to stimulate new business or clinch a deal.

5. Allows an advertiser to concentrate more on the less expensive media during months when his advertising budget falls, rather than lose the account for the month.

6. Fluctuations in the economy do not always affect radio and TV in the same way. Having a wider business base, spreads the risk.

General enhancements:

1. Perception is everything! It is likely that the viewers will regard a station which also operates a radio station as more competent. Only the networks like ABC and CBS have both TV and radio stations. Thus, we would enter a new class in the eyes of many viewers.

2. It may be possible to re-broadcast the radio signal on SAP (Second Audio Program) over our TV signal, thus carrying it to more distant locations. During the racing program, we could use the SAP channel for Spanish language feeds.